WAC 246-75-010 – Medical Marijuana
Concise Explanatory Statement Attachment

The department received comments from advocacy groups, patients, designated caregivers, family members, friends, and the general public. The department also received comments from doctors, nurses, and other health care providers. The majority of the comments received were in opposition to the proposed rule.

Some comments opposed the use of medical marijuana. Some of those comments were from chemical dependency professionals. The department also received a few comments in support of the rule.

Most of the comments the department received in opposition to the rule focused on the definition of "immature plant" and "mature plant," and what most felt was an arbitrary definition not based on scientific research.

The comments and responses are summarized below by common themes.

Summary of Comments:

Comments Regarding Definition of Plants and Plant Count

Many comments did not agree with the definition of "mature plant" and "immature plant." Comments indicated that a plant is only mature when it is flowering and producing buds. They also indicated that plants, based on species, growing method, location, or other factors, may be very large and not mature, or very small and mature. They also felt the definition was not based on scientific evidence.

There were several suggestions for using different terms, such as seedlings, clones, vegetative, and flowering to define plant stage. They also recommended various combinations of plant stage and number, such as, nine flowering, nine vegetative, and nine clones to define plant count. Comments suggested removing the definition to allow for 24 plants of any size or stage of growth.

Many comments stated that six mature plants would not produce enough marijuana to maintain the proposed 60-day supply of 24 ounces. They also stated that the number of plants was not based on scientific evidence.

RESPONSE:

In response to the comments received, the department has revised the rule in order to address concerns about the definition and number of plants. The adopted rule no longer defines plants as "immature plant" and "mature plant" and changes the number of plants a patient or designated provider may possess to no more than fifteen, regardless of size or stage of growth. The adopted rule allows for a larger number of mature plants if necessary. The department did not assume that a mature plant would produce an average amount, or range, of useable marijuana.

Additional Comments Regarding Definition of Plants

Many comments urged the department to use square footage of plant canopy instead of number of plants. They felt square footage was a more accurate indicator of plant yield and is easier to comply with.

Several comments stated that the statute did not give the department authority to define by rule how many plants a patient or designated provider can have. They indicated that the department should only define the amount of cultivated or useable marijuana that a patient should possess as a 60-day supply.

RESPONSE:
Plant canopy square footage is more difficult to determine than counting the number of plants a patient or designated provider possesses. There is limited scientific research on plant yields, and there are too many factors that affect the amount of marijuana a plant will yield.

The only way patients and designated providers can legally obtain marijuana is to grow it. Without specifying the number of plants, it would remain unclear how a patient can obtain a 60-day supply of marijuana. Defining the number of plants in rule will also make it clear that patients or caregivers can possess plants.

Comments Regarding Definition of Useable Marijuana
Some comments stated 24 ounces was not enough useable marijuana to maintain a 60-day supply. Ingesting or using tinctures, lotions, and other alternative delivery methods requires much more marijuana. They also stated that the determination for the amount of useable marijuana was not based on scientific research.

RESPONSE:
Patients in the federal government's Compassionate Investigational New Drug (IND) program receive on average about 17.5 ounces of medical marijuana in a sixty-day period. The program assumes that participants in the study only use marijuana by smoking. The amount defined in the rule allows an additional amount for other methods of use, such as ingestion. Twenty-four ounces is also the same limit that Oregon has adopted. The rule only establishes a presumption; it allows a doctor to recommend amounts above the definition if it is necessary for a patient's medical use.

Other Comments Regarding Definition of 60-day Supply
A few comments stated that the patient's doctor should determine what a 60-day supply should be for their patient.

Some comments supported a 60-day supply of 71 ounces of useable marijuana and 99 plants.

Some comments recommended the department define a 60-day supply as 35 ounces of useable marijuana and 100 square feet of plant canopy.

A few comments stated that there should be more than one definition to allow for a higher amount for patients with chronic conditions. A few comments stated that there should be no limit at all.

RESPONSE:
The legislation directed the department to define what constitutes a 60-day supply. Leaving this decision up to an individual's doctor would not give clear direction to patients or law enforcement. It would also require doctors to specify a prescribed amount of a substance considered illegal by the federal government. It is also contrary to the intent of the law, which is to provide clear guidance. The law does allow a doctor to choose to recommend amounts above the definition if it is necessary for a patient's medical use.

Other options, such as 71 ounces and 99 plants or 35 ounces and 100 plants, were not adopted because (1) the proposed numbers are not based on science, such as 99 plants, which is based on federal sentencing guidelines; or (2) the proposals do not balance the needs of all stakeholder groups. Part of the intent of the rulemaking is to provide clarity. Creating more than one definition, based on medical condition, would make the rule more complex.

Comments Regarding Overcoming Definition with Medical Evidence
Several comments received suggested that the language in 246-75-010 (3)(c) adds a new requirement, not intended or authorized by the legislation, by requiring written documentation from a patient's physician in order to prove a patient needs a higher quantity of marijuana for his/her condition.

RESPONSE:
In response to the comments the department has changed the language to match the law (RCW 69.51A.080). The adopted rule states that a patient can overcome the presumption of a 60-day supply with evidence of necessary medical use.

Other Comments Not Related to the Definition of 60-Day Supply
The department also received many comments not related to the definition of a 60-day supply of marijuana. Some of these comments include:

- Suggestions of conditions that should be added to the list of qualifying conditions
- Suggestions for establishing distribution systems in Washington
- Legalization of all uses of marijuana
- Concerns that law enforcement abide by the law and treat patients fairly
- Allowing the use of marijuana as an alternative to opioids
- Requiring patient education
- Creating reciprocity with other states
- Rescheduling of marijuana in Washington

RESPONSE:
The department is not able to address those issues because the law does not give the department that authority. The department's charge is limited to defining a 60-day supply. In response to ESSB 6032, the department has completed a report on alternative distribution systems for medical marijuana. Changing the law to establish distribution systems in Washington State is a policy decision for the legislature.

Chapter 69.51A RCW allows the public to petition the Medical Commission and the Board of Osteopathic Medicine to add conditions to the approved list. The department does not have the authority to reschedule marijuana in this state. Only the Board of Pharmacy can consider petitions for rescheduling.

The department, and the Board of Pharmacy, does not have enforcement authority for medical marijuana. Neither entity can intercede with law enforcement on behalf of medical marijuana patients.

Although the department has established a definition of a 60-day supply, and chapter 69.51A RCW creates a medical marijuana law in this state, marijuana still remains an illegal substance according to federal law.

Comments on the Significant Analysis

The department also received many comments about the significant analysis. Almost all of the comments were related to the rule language regarding plant amounts and definition of mature and immature plants. Those issues have been addressed above.

Comments in response to the significant analysis mostly disagreed with statements in part D that suggested larger amounts of marijuana could promote illegal activity and put patients and caregivers at risk of being robbed. The comments the department received indicated they thought these statements were inaccurate and fear-based.

There was also opposition to the use of Oregon's law as a model for the rule. Some people did not think we should use another state's law as a basis for the rule if there is no reciprocity with that state's medical marijuana law.

RESPONSE:

The department has made changes to the final significant analysis to reflect the adopted rule. The department considered all the comments received during development of the rule when drafting the significant analysis. The statements in the significant analysis were comments heard by department staff during the rule workshops. In addition, the department considers the experience of other states with existing laws valuable when developing rules on the same, or similar, subject.